# Supreme Court of the United States

MICHAEL RODAK, JR., CLERK

October Term, 1974
No. 74-812

CHAMPION OIL SERVICE COMPANY,
*Petitioner,*

vs.

SINCLAIR OIL CORPORATION,
SINCLAIR REFINING COMPANY
AND
ATLANTIC RICHFIELD COMPANY,
*Respondents.*

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

## BRIEF OF RESPONDENTS IN OPPOSITION

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### QUESTION PRESENTED

Whether the Court of Appeals correctly determined that the District Court erred as a matter of law in not granting Sinclair's motion for a directed verdict since there was no proof that the contracts and leases complained of were designed to, or in fact did, result in unreasonable restraint of trade.

## STATEMENT

### A. Proceedings Below

This is an action alleging a violation of the Sherman Act (15 U.S.C. Sec. 1). The complaint was filed by Champion Oil Service Company ("Petitioner"), a wholesale distributor of petroleum products in southwestern Ohio, against Sinclair Refining Company ("Sinclair"), its former supplier of petroleum products.

Petitioner's contention in the District Court was that in late 1965 and early 1966 Sinclair prevented it from extricating itself from a serious financial situation by making an alternative distributorship affiliation with a Sinclair competitor. The alleged means used by Sinclair to accomplish this end was the existence of certain "lease/leaseback agreements" petitioner had entered into with Sinclair beginning in 1958 to enable petitioner to finance the acquisition and development of several retail outlets for its products. Petitioner claimed, therefore, that the lease/leasebacks were entered into by Sinclair beginning in 1958 for the purpose of restraining trade and that they actually had that effect in late 1965 and early 1966 by preventing it from affiliating with a Sinclair competitor.

Prior to trial, the District Court dismissed petitioner's *per se* claims under the Sherman Act and set for jury trial the issue of whether petitioner's claims amounted to a *non per se* unreasonable restraint of trade.

The District Court, although initially expressing equivocation as to the adequacy of petitioner's proof (II, 469)[1]

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1. References to the Appendix of three volumes filed with the Court of Appeals and lodged by Petitioner with this Court will omit the reference "App." and refer only to volume and page.

denied Sinclair's motion for a directed verdict. Sinclair then declined to present any evidence. The jury found for petitioner and set damages at $989,457 before trebling. The District Court denied Sinclair's motion for judgment n.o.v., and entered judgment for petitioner in the amount of $2,968,371 (Pet. App., 12a-18a).[2]

Upon appeal by Sinclair, the Court of Appeals found that Sinclair's motion for a directed verdict should have been granted. The Court held that "there was no direct evidence, or evidence from which it could properly be inferred, that any other oil company refused to refinance Champion and accept it as a distributor because of the existence of the lease/leaseback agreements." (Pet. App. 11a). The Court stated that the evidence was overwhelming that Champion's inability to extricate itself from its financial problems and affiliate with a Sinclair competitor was a result of its own financial ineptitude (Pet. App. 11a). The Court found that "there was no proof that the contracts and leases complained of were designed to, or did in fact, suppress interbrand competition, or otherwise result in unreasonable restraint of trade" (Pet. App. 11a). It thereupon instructed the District Court to enter judgment dismissing petitioner's complaint (Pet. App. 12a).

**B. Petitioner's "Statement of Facts" Omits Stipulated, Admitted and Undisputed Facts As to Whether the Lease/Leasebacks Actually Prevented Petitioner from Securing an Alternative Distributorship with a Sinclair Competitor.**

Petitioner devotes almost sixteen pages of its long petition discussing bits and pieces of evidence relating to (a) the background of petitioner's relationship with Sinclair from 1958 to 1965; (b) petitioner's serious financial

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2. Citations to the appendix to this petition are in the form "Pet. App. ....". Citations to the petition are in the form "Pet. ....".

problems in 1965; (c) discussions in late 1965 between various Sinclair employees as to possible solutions to petitioner's financial problems; (d) discussions between Sinclair employees and petitioner's President, Glenn Douglass ("Douglass") in late 1965 and early 1966 looking to a solution of those problems; and (e) numerous negotiations between September, 1967 and early 1968 involving a mutually agreeable solution to petitioner's deteriorating financial position, and concomitantly, Sinclair's deteriorating market position (Pet. 3-19).

Although this section of the Petition is headnoted as various "steps" in Sinclair's "taking control" of petitioner there is not a word in these sixteen pages related to the basic issue as to whether the existence of the lease/leasebacks *actually* prevented Champion from extricating itself from its financial problems in 1965-1966 by securing a distributorship with a competitive supplier.

The petition completely ignores the following admitted, stipulated or undisputed evidence relating to petitioner's efforts, starting in August, 1965, to secure such an alternative distributorship:

1. In August, 1965, following Sinclair's rejection of a $700,000 loan to petitioner, Douglass felt Sinclair would release the complained of lease/leasebacks "if I could get some other company to take their place with the bank." Therefore, he started to check out all of his old contacts in the oil industry to obtain the financing refused him by Sinclair (I, 82; 247; 294-295).

2. All of the seven financed service stations subject to the complained of lease/leasebacks were *included* in "the package of service stations" Douglass presented to oil companies for their approval of an alternative distributorship (I, 289-292; 300-302; III, 94-99).

3. Douglass began negotiations to obtain financing from The Cities Service Oil Co. ("Citgo") late in 1965.

Based upon the financial information Citgo received from Douglass in early 1966, Citgo prepared a distributor contract which Douglass actually signed on behalf of petitioner sometime prior to March, 1966 (I, 286; 303-304). Citgo's signing of the distributor contract, however, was made contingent upon its credit department approving Citgo granting credit to petitioner totaling $750,000 (III, 94-102). This credit exposure included a $475,000 direct loan by Citgo to petitioner; Citgo assuming the Sinclair leases on three of petitioner's stations financed by Sinclair by the lease/leasebacks, and Citgo granting petitioner open account credit of $50,000 to $75,000 (I, 286-288). In addition *Citgo was to take second mortgages on all of the other properties which were financed under Sinclair's lease/leasebacks if not released by Sinclair* (I, 287, 299; III, 94-99). On March 24, 1966 the credit manager for Citgo, Mr. Gordon Diggle, rejected the loan *because of petitioner's poor financial condition at the time* (I, 287-289; III, 100-102).

4. In the spring of 1966 petitioner's business was also examined by the Fleetwing Oil Co. ("Fleetwing"), an affiliate of The Standard Oil Co. of Ohio, with a view toward Fleetwing financing petitioner and establishing petitioner as a distributor. A "business analysis" of petitioner was performed at the time by Mr. Thomas Balke, a Fleetwing executive in the wholesale department (II, 638-640). Balke rejected any Fleetwing association with petitioner stating that his projections showed that petitioner would be insolvent within two years, and that of the twenty-six jobbers he had evaluated at the time in Ohio, Michigan, Kentucky, Indiana and Pennsylvania "petitioner rated next to the bottom, second from the bottom" (II, 642-643, 646).

5. Another Sinclair competitor, Sun Oil Co. ("Sun") was actually selling petroleum products to petitioner dur-

ing 1965 and 1966 (I, 298). During this time Douglass discussed several alternate methods of financing with the Sun representative in southwestern Ohio, Mr. Daniel O'Brien. These discussions never included how many service stations would be involved in any possible Champion-Sun affiliation, and were not pursued by Sun because petitioner "was financially too deeply involved with other people for Sun to become interested" (I, 289-290; II, 475-476).

6. Still another Sinclair competitor, Tresler Oil Co. ("Tresler") also sold petitioner a large amount of petroleum products "all through the 1960's" and was a large supplier to petitioner in 1965 and 1966 (Ex. K; III, 112-115; II, 650). In late 1965 and early 1966, Tresler and petitioner worked together on an "intensive analysis" of petitioner's business with a view to petitioner selling Tresler brand petroleum products at petitioner's service stations and at five Tresler stations located in Butler County (II, 65-66; Def. Ex. I, J; III, 103-106). In early 1966, as a result of its intensive analysis of petitioner, *Tresler made an offer to petitioner to switch to its brand* and give petitioner financial, promotional and sales aid if petitioner would cut its expenses to the reasonable level expected of a jobber (I, 305-309; Def. Ex. I, J; III, 103-106, II, 612-613). Douglass, on behalf of petitioner, refused Tresler's offer stating:

> "We have a right to choose which way we wanted to go, and chose to go the increased gallonage way rather than disband our organization by laying off people and trimming expenses" (II, 615) and ". . . if I care to go to Tresler today I could probably pick up where I left off, but we did not pursue it, and that's that" (I, 305).

7. Following Champion's January, 1966 cancellation of its distributor agreement with Sinclair, representatives of Sinclair met with Douglass and his sons on February 4, 1966 for the purpose of discussing procedures for orderly dissolving that relationship. Petitioner stipulated prior to trial that *at that meeting Douglass was urged by Sinclair representatives to find another supplier and that he replied that he was optimistic about working out an arrangement with a competitor* (I, 77; 302). No mention was made at the time concerning any difficulty being experienced by petitioner in this regard as a result of the existence of the lease/leasebacks (I, 284-285).

8. On April 7, 1966 V. R. Gordy ("Gordy"), Sinclair's Ohio manager, wrote to Sinclair's Manager of Distributor Sales in Chicago as follows:

> "Mr. Douglass is negotiating with three competitive companies, Citgo, Fleetwing and Tresler. It is anticipated he will finalize a distributor arrangement with one of the three the week of April 11th. Mr. Douglass will then be in a position to pay his indebtedness to our company". (I, 80).

On April 8, 1966, however, Gordy and Douglass had a meeting at which time Douglass told Gordy he had not been able to make a deal with another supplier (I, 83). Thereafter, petitioner elected to sign a distributor agreement with Sinclair cancellable by either party on thirty days' notice (I, 83).

9. This month-to-month distributor relationship between Sinclair and petitioner continued for over a year. During this period and thereafter petitioner turned to banks, financial institutions, and investment companies for possible relief from its poor financial situation. Champion approached a "mercantile company" in Chicago, the Fifth

Third and Central Trust banks in Cincinnati; the Swiss Credit and Swiss Union banks in Switzerland; attempted a merger with the Columbia Oil Co. to be financed by the Fifth Third Bank in Cincinnati; and engaged the George May Company, an international consulting firm, to find sources of refinancing (I, 88, 99, 121-122; 269-270; II, 604-609). *All of these efforts came to naught for various reasons having nothing to do with the complained of lease/leasebacks* (I, 269; II, 607-608).

10. To obtain funds for purposes "other than supply", however, *during this period Champion used the equities in the seven lease/leaseback service station properties which it claims prevented it from securing financial relief to actually obtain second mortgage financing* (I, 299-300).

**C. The Court of Appeals Opinion**

After viewing "the evidence in the light most favorable to Champion and [giving] it the benefit of all inferences which the evidence fairly supports . . ." (Pet. App. 8a), the Court of Appeals relied upon much of above evidence omitted by petitioner in reversing the District Court and granting judgment for Sinclair.

After discussing at some length the early relations between the parties and the operation of the lease/leasebacks (Pet. App. 1a-4a) the Court of Appeals examined the evidence as to petitioner's attempts to secure an alternative distributorship in late 1965 and early 1966 following Sinclair's rejection of a $700,000 loan to petitioner (Pet. App. 4a-7a). In referring to Douglass' testimony concerning his contacts with Sinclair competitors, the Court concluded that Douglass' assertions that the lease/leasebacks prevented petitioner from securing an alternative distributorship were based upon his "opinion after a lifetime in the business of distributing petroleum products that no other oil company would finance him so long as Sinclair controlled the desirable locations

represented by the seven financed stations." (Pet. App. 5a).

The Court of Appeals then proceeded to discuss the evidence brought out on Douglass' cross examination and noted the following facts admitted by Douglass which contradicted this opinion testimony:

1. That Cities Service Oil Company and Sun Oil Co. declined petitioner's requests for financial assistance because of petitioner's "burdensome debt structure and unprofitable operating experience" without reference to any refusal of Sinclair to release the base leases on the seven service station properties (Pet. App. 6a);

2. That petitioner had purchased petroleum products from Tresler Oil Co. during the entire time it was a Sinclair distributor and that financial help was offered to petitioner by Tresler (Pet. App. 6a);

3. That Douglass admitted that petitioner obtained financial help by placing second mortgages on all of the seven lease/leaseback financed service stations (Pet. App. 6a);

4. That petitioner, at one point, was purchasing 98% of its petroleum products from Sinclair competition (Pet. App. 6a); and, finally;

5. That Douglass admitted that the Ohio manager of Sinclair told him to find another supplier and that he "assumed" that there would be an agreement freeing the three remaining service stations from the base lease to Sinclair (Pet. App. 6a).

After then referring to the legal authorities cited by both parties and concluding that it must "look beyond" cases dealing solely with exclusive supply agreements (Pet.

App. 9a), the Court of Appeals concluded that the evidence was "overwhelming" that the existence of the lease/leasebacks had nothing to do with petitioner's attempt to salvage its business and that it was petitioner's financial condition which prevented it from securing a relationship with another supplier (Pet. App. 11a).

Following a finding that the lease-leasebacks were appropriate conventional land financing instruments, and, after again emphasizing that petitioner had actually obtained some financial relief by using the equity built up by Sinclair's continuing rent payments, the Court of Appeals held that "there was no proof that the contracts and leases complained of were designed to, or did in fact, suppress interbrand competition, or otherwise result in unreasonable restraint of trade" (Pet. App. 11a).

## ARGUMENT

### A. No Important Question of Federal Law, or Conflict Among the Circuits, or Conflict with the Decisions of This Court Is Involved Here

The petition merely attempts to obtain a trial *de novo* after the evidence failed to establish the elements of an antitrust cause of action. Petitioner attempts to accomplish this through its contention that the Court of Appeals "improperly compartmentalized" the evidence in reversing the judgment of the district court and dismissing the complaint. No important federal question is involved. Nor is there any conflict with any decision of this Court.

This Court has repeatedly held that it will not grant certiorari "to review the evidence or inferences drawn from it". See, e.g. *General Talking Pictures Corp. v. West-*

*ern Electric Co.*, 304 U.S. 175, 178 (1938). Yet this is the precise function which petitioner now asks this Court to perform.

Since any review here would necessarily relate only to the limited factual situation presented by the petitioner and would not enlarge on any question of substance that has not already been decided by this Court, we respectfully submit that the petition should be denied.

**B. The Court of Appeals Correctly Determined, After Following the Proper Standards in the Consideration of the Evidence, That the District Court Erred As a Matter of Law in Not Granting Sinclair's Motion for a Directed Verdict**

No departure from the accepted and usual course of judicial proceedings is remotely present here. The holding of the Court of Appeals was properly arrived at after a consideration of all of the evidence in its strongest light in favor of petitioner, and after giving petitioner the advantage of every fair inference justified by the evidence. *Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 696 (1962) (Pet. App. 8a).

Furthermore, there can be no dispute that if the District Court erred in its determination that sufficient evidence existed for the case to go to a jury, that is an error of law correctable by the Court of Appeals. *United States v. Generes*, 405 U.S. 93, 106 (1972); *Bryan v. United States*, 338 U.S. 552 (1950); *Neely v. Eby Construction Co.*, 386 U.S. 317, 322 (1967).

The Court of Appeals, in holding that the District Court erred as a matter of law, fully considered petitioner's contention here that the purpose and effect of the lease

arrangements was to prevent petitioner from extricating itself from its financial difficulties and "salvaging its business" (Pet. App. 5a-6a). Relying upon admissions by Douglass upon cross examination, the Court of Appeals found that the leases had nothing to do with petitioner's problems and that petitioner's inability to extricate itself from its financial problems were based upon its poor financial condition and inability to reduce operating expenses (Pet. App. 6a-11a). The Court of Appeals specifically held as follows:

> "There was no direct evidence, or evidence from which it could properly be inferred, that any other oil company refused to refinance Champion and accept it as a distributor because of the existence of the lease/leaseback agreements. To the contrary, the evidence is overwhelming that the refusals were based on the poor financial condition of Champion and its inability to reduce operating expenses—the very consideration which caused Sinclair to put it on a C.O.D. basis." (Pet. App. 11a).

In the face of this holding by the Court of Appeals it is simply an inexcusable distortion for petitioner to represent to this Court that "the Court of Appeals gave absolutely no consideration to the impact of the challenged practices upon petitioner's freedom to select its suppliers in accordance with its own best business judgment." (Pet. 24-26).

Petitioner's only passing attempt to discuss the actual holding of the Court of Appeals is contained in a footnote on Page 27 of its Petition where it erroneously states that the holding of the Court of Appeals is addressed only to "the question of whether competition between major oil companies had been affected." (Pet. 27, Footnote

9). This statement is apparently based on petitioner's claim that the record contained evidence that (1) in August, 1965, Sinclair refused to release the leases; (2) in previous years suppliers were interested in soliciting petitioner; and (3) in the opinion of one Sinclair employee in late 1965 a release of the stations would be important to petitioner in securing an affiliation elsewhere (Pet. 27, Footnote 9).

The short answer to this contention is that speculations by either Douglass or Sinclair employees as to what other oil companies *might* have done is irrelevant in the face of overwhelming evidence as to what the other oil companies *actually did* in early 1966. What all but one of the oil companies *did*, as the Court of Appeals held, was to refuse to refinance petitioner, or accept it as a distributor, because of its poor financial condition and inability to reduce operating expenses, *not* because of the leasebacks. Furthermore, what these companies did was *not affected* by any "refusal" of Sinclair to "release the leases" in August, 1965.[3] That this is so is conclusively shown by a proposal to petitioner for second mortgages on "unreleased" station properties by at least one competitor (I, 286-288; III, 94-99). The last oil company did *not* refuse financial aid to petitioner but made a *specific offer of a distributorship to petitioner* without any reference at all to the lease/leasebacks, which petitioner rejected (I, 305-309; II, 612-613; III, 103-106).

Furthermore, it should need no extended discussion to dispose of the petitioner's argument that there is some

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3. Giving the petitioner the benefit of all inferences, it is undisputed that after early 1966, only three of the "base leases" remained to be released and Douglass admitted "that the Ohio Manager of Sinclair told him to find another supplier and that he 'assumed' that there would be an agreement freeing the three remaining stations from the base lease to Sinclair." (Pet. App. 6a).

distinction between an evaluation of proof of impact "upon Champion's freedom to select its suppliers" and an evaluation of proof of "foreclosure of competitors from the market" (Pet. 26-27). Clearly these propositions are two sides of the same coin. If there is no proof that Sinclair foreclosed its competitors from Champion's business, Champion was free to select its suppliers. Conversely, if there is no proof that Champion was prevented from selecting its suppliers, Sinclair's competitors were free to seek Champion's business. No linguistic exercise can alter the Court of Appeals' holding that there was no evidence that the lease/leasebacks had anything to do with petitioner's freedom to select its supplier, or other suppliers' freedom to select petitioner as their distributor.

Thus petitioner's major argument that the Court of Appeals "compartmentalized the evidence and narrowly conceptualized the instant case as fitting into the requirements contract mold" (Pet. 23) falls of its own weight without further argument.[4]

Petitioner's apparent reason for making this "compartmentalization" argument is presumably to attempt to demonstrate that the Court of Appeals should have considered purported 1965 evidence of Sinclair's "attempt to control" petitioner as evidence of Sinclair's "anticompetitive purpose" when the lease/leasebacks were entered into beginning in 1958 (Pet. 27-29, footnotes 10, 11).

The short answer to this contention is that petitioner candidly admits that the lease/leasebacks were "conventional land financing" instruments (Pet. 33) and were "recognized in the industry as appropriate to protect a

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4. It should be noted that, contrary to petitioner's representations to this Court, the Court of Appeals *expressly refused* to follow cases dealing only with requirements contracts (Pet. App. 9a).

particular legitimate interest" (Pet. 28). Thus petitioner has precluded itself from a finding that Sinclair possessed an "anticompetitive animus" in 1958 at the time the lease/leasebacks were entered into (See Petitioner's argument in footnote 10 on p. 27 of the Petition).

Further, however, and completely contrary to petitioner's representation to this Court, the Court of Appeals *did* fully consider petitioner's contention as to Sinclair's "attempt to control" petitioner. It stated:

> "It is the position of Champion that it was the intention of Sinclair to control Champion's portion of the Butler County petroleum products business by obtaining 15-year leases on Champion's prime service station sites, which leases had no escape clause, while at the same time leasing the stations back to Champion under an instrument which provided that the leaseback could be cancelled upon termination of the distributorship agreement. This intention was realized, says Champion, when Sinclair refused to release the stations, making it impossible for Champion to deal with a Sinclair competitor. Thus there are factors in this case which require us to look beyond Elder-Beerman and other cases dealing with exclusive supply agreements" (Pet. App. 9a).

The Court of Appeals, on the basis of the entire record, and particularly the evidence brought out on Douglass' cross examination (Pet. App. 6a); and after giving petitioner the benefit of inferences which the evidence fairly supported (Pet. App. 8a); simply found that there was insufficient evidence of such an intention, or the realization of such intention, to go to the jury (Pet. App. 11a).

There need be no discussion of any of the cases cited by petitioner since they all express legal principles which

are not at odds with any of the authorities cited by the Court of Appeals, nor are any of these cases contrary to its holding.

Nor is the case for review strengthened by petitioner's claim that the decision below "hobbles" the Sherman Act's "design" and "sweep" to protect independent distributors of petroleum products (Pet. 33-35). The true effect is exactly the opposite. Nothing could serve more to discredit the antitrust treble damage remedy than to award approximately $3,000,000 to a plaintiff whose damages are self-inflicted. The Court of Appeals has only reaffirmed that federal courts should not be encumbered by plaintiffs searching for windfalls at the expense of those who properly seek the aid of the courts.

## CONCLUSION

Petitioner tried this case on the theory that it was prevented by Sinclair from affiliating with a competitive supplier as a result of the complained of lease/leasebacks and that, therefore, Sinclair was guilty of a restraint of trade.

The Court of Appeals correctly ruled that petitioner failed to present minimally adequate evidence of their stated case to go to a jury and that the District Court therefore erred as a matter of law in permitting the case to go to a jury.

No issue of any importance warrants review by this Court.

The petition for certiorari should, therefore, be denied.

Respectfully submitted,

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